

Robin Anak Mawang v Public Prosecutor
[2005] SGHC 222

Case Number : MA 117/2005
Decision Date : 30 November 2005
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Siaw Kheng Boon (Siaw Kheng Boon and Co) for the appellant; April Phang (Deputy Public Prosecutor) for the respondent
Parties : Robin Anak Mawang — Public Prosecutor

Criminal Law – Offences – Public tranquillity – Rioting – Appellant member of unlawful assembly with common object of causing hurt – Appellant admitting to punching and kicking victim – Whether necessary to prove appellant punched victim to establish charge of rioting – Sections 141, 146, 147 Penal Code (Cap 224, 1985 Rev Ed)

Evidence – Witnesses – Corroboration – Whether trial judge relying solely on eyewitness's uncorroborated testimony in convicting appellant – Whether absence of express finding of sufficiently compelling testimony warranting acquittal

Evidence – Witnesses – Quality of identification evidence – Whether factors existing supporting identification evidence of good quality

30 November 2005

Yong Pung How CJ:

1 This was an appeal against the decision of a district judge (“the judge”), wherein the appellant was convicted of the offence of rioting and sentenced to 15 months’ imprisonment. The appeal was against conviction. I now give my reasons for dismissing the appeal.

The undisputed facts

2 The victim, Alam Abdul Alim (“Alim”), was assaulted in front of the “This Fashion” store (“the store”) at the corner of Middle Road and Victoria Street on the evening of 12 June 2005 at about 5.35pm. As a consequence of the assault, Alim suffered several injuries to his head.

3 Prior to the assault, the appellant and one Joseph Anak Julin (“Joseph”), were at a nearby pub with at least seven other male persons. Joseph admitted to punching Alim. On his part, the appellant admitted that he had been in the vicinity and had walked past the crime scene.

4 Both parties were later arrested at the platform of Bugis Mass Rapid Transit (“MRT”) station, and brought back to the police station in the same patrol car. In the car, they had discussed the assault with each other.

5 Subsequently, they were similarly charged and jointly tried for the offence of rioting. In particular, the charge against the appellant was framed as follows:

You, Robin Anak Mawang, M/23 YRS, FIN: G7458333X, are charged that you, on 12 June 2005, at about 5:35pm, outside the ‘This Fashion’ store on the corner of Middle Road and Victoria Street, Singapore, together with one Joseph Anak Julin, M/20 yrs, and 3 other unknown male persons, were a member of an unlawful assembly whose common object it was to cause hurt to one Alam Abdul Alim, M/36 yrs, and in prosecution of the common object of such assembly, one or more of

you did use violence, to wit, by punching and kicking the said Alam Abdul Alim, and you have thereby committed an offence punishable under section 147 of the Penal Code, Chapter 224.

Disputed facts

6 As Joseph had admitted to assaulting Alim, the central controversy in the trial below was over the involvement and participation of the appellant and three others in the assault.

Case for the Prosecution

7 Eight witnesses testified for the Prosecution. They consisted of Alim; the doctor who had examined Alim; one Mohd Fadzil bin Abdul Malik ("Fadzil"), a police officer who was a witness to the assault; and five other police officers, two of whom were involved in the arrest of Joseph and the appellant.

Fadzil's testimony

8 It is essential for me to set out Fadzil's testimony in detail, as one of the principal contentions raised by the appellant was that the identification evidence based on Fadzil's testimony was of poor quality.

9 Fadzil, a police officer, was off duty when he witnessed the assault. On the material day at about 5.30pm, Fadzil was at a motor showroom with his family when he heard a loud bang, and noticed that a signage board (of Golden Crystal Niteclub) had landed in front of the entrance of the showroom. The impact prompted him to leave the showroom.

10 At that juncture, he saw a group of five foreign male persons behaving in a rowdy and chaotic manner. They were speaking in a language which sounded to him like Malay or Dayak. He then observed another commotion involving a *separate* group of five to ten persons. Fadzil called the police as he felt that a fight was about to ensue.

11 Fadzil then followed the first group of five foreign males who were walking towards the direction of a store. Along the way, one of them, a male who sported shoulder-length hair and wore a long-sleeved bright blue T-shirt, kicked another signage board (of Pool Fusion 3). He was later identified as Joseph during the trial. As the group continued their walk in the same direction, they linked their arms, and were pushing and shoving one another.

12 Fadzil testified that he noticed the attire of the other members to be as follows: one was in a short-sleeved, almost white shirt; another, who was quite stout and big built, was in a long-sleeved dark-coloured shirt; the other two were in normal short-sleeved white T-shirts. Fadzil paid particular attention to the male who was in a short-sleeved, almost white shirt, as he was linking arms with Joseph, and sported long hair that appeared "blown", which was about five to six inches in thickness. He also had a truckers cap dangling from the left side of his pants. Fadzil later identified this male as the appellant.

13 From a distance of 10m to 15m away, Fadzil witnessed the assault on Alim who was standing alone, in front of the store at the junction of Middle Road and Victoria Street. When the group walked past Alim, Joseph suddenly used his right fist to punch Alim around the head and neck. Next, Joseph pulled Alim's hair, causing him to fall to the ground. At this juncture, Joseph bent down, lifted Alim's head and bashed it to the ground once. The appellant and the others then began kicking Alim's upper body, with the appellant giving one kick, while the others kicked two or three times. After the kicking,

the appellant held Joseph's left arm and pulled him up, and the entire group continued walking along Victoria Street towards the direction of Bugis Junction.

14 Worried for Alim's condition, Fadzil promptly approached Alim after the group had left, and inquired after his well-being. Alim murmured something in response. Having noticed that Alim was bleeding profusely from his head and was semi-conscious, Fadzil called for an ambulance. While he did this, he kept an eye on the group. He also called for his father to stay with Alim to wait for the police and ambulance to arrive. Fadzil testified that he was with his father and Alim for about half a minute.

15 Thereafter, Fadzil walked along Victoria Street and followed the group who subsequently stopped at the bus stop in front of Bugis Village. While Fadzil stood at an elevated pavement in front of the junction of New Bugis Street and Victoria Street observing the group, two police officers arrived in a patrol car that had its siren on. Upon seeing the patrol car, the group split into two groups. One group comprising the two males in the short-sleeved white T-shirts went into Bugis Village while the other group of three walked towards the underpass in the direction of Bugis MRT station. Fadzil testified that he decided to follow the latter group as the main assailant, Joseph, was in that group. Fadzil went ahead first, with the two police officers following him. However, when he reached the entrance of the underpass leading to Bugis MRT station, he lost sight of the group. Fadzil took a calculated decision to enter the platform of the station to look for the group of three.

16 Accompanied by the two police officers, Fadzil entered the platform, and spotted Joseph sitting on the bench, looking nervous. He identified Joseph to the police officers, and Joseph was accordingly detained. Fadzil then caught sight of the appellant who was standing by a pillar, and also appearing nervous. He approached the appellant, showed his warrant card and asked for the appellant's work permit. Before the appellant could board a train, the police officers moved in to detain him. Fadzil declared that he was positive that the appellant was one of the assailants who had kicked Alim, as the appellant had a unique hairstyle and a truckers cap dangling from the left side of his pants. Fadzil had earlier seen the truckers cap in the same position on one of Alim's assailants.

The arresting police officers' testimonies

17 The testimonies of the police officers material to the events leading to the arrest of Joseph and the appellant were consistent with Fadzil's account. When they arrived at the crime scene, they saw two broken signage boards, as well as Fadzil's father with Alim who was bleeding from his head. After being informed that Fadzil had trailed the assailants, they proceeded (in the patrol car) to Fadzil's position outside Bugis Village. The police officers then went with Fadzil to the platform of Bugis MRT station where Fadzil identified two males as the culprits. One of them was sitting on the bench while the other was standing at a pillar nearby. Both were subsequently arrested, brought to the crime scene, and later to the police station for questioning.

Other testimonies

18 Alim testified that he was caught unawares when he was assaulted in front of the store. A man had approached him and punched him on his left cheek. He fell to the ground and the next thing he remembered was someone asking him what had happened. As the first blow rendered Alim unconscious, he was oblivious of anything else that subsequently happened to him. However, he reiterated that prior to the assault, there was no confrontation between him and his assailant. The doctor who had examined Alim after the assault confirmed Alim's lack of consciousness, and that he had suffered several injuries to his head, with no other injuries to the rest of his body.

19 The other police officers who gave evidence were those involved in the investigation of the

incident. A pertinent aspect of their evidence was that a long-sleeved blue T-shirt and a short-sleeved white shirt were seized from Joseph and the appellant respectively.

Case for the Defence

20 Both Joseph and the appellant flatly denied that the latter was involved in the assault on Alim. However, they did not dispute the fact that the appellant was with Joseph in the pub prior to the assault, and that they were good friends.

Joseph's testimony

21 Joseph testified that after a fight broke out in the pub, he, together with ten others (excluding the appellant), left the pub by the stairs. Joseph decided to walk ahead alone while some friends followed him from behind. He emphasised that the appellant was not with him and that the friends following behind him were known as Abing, Jali and Rambo. As Joseph was feeling intoxicated and agitated, he decided to vent his frustrations on Alim, a total stranger. Joseph punched Alim three times on the left side of his face, and pushed him. Joseph also stamped Alim's face after the latter had fallen to the ground. Joseph asserted that none of his friends intervened during the assault on Alim.

22 Following that, Joseph and two of his friends (Abing and Jali) who were still behind him, walked towards Bugis MRT station. When they crossed the road, they saw two police officers and patrol cars. Feeling guilty, Joseph ran towards Bugis MRT station. At this juncture, he met the appellant at the escalator, and told the latter to run as the police had arrived. In reply, the appellant told him that it was all right as the police had stopped chasing. At the platform of Bugis MRT station, Joseph was seated while the appellant leaned against a pillar nearby. When questioned by the arresting officers, Joseph denied hitting anyone and denied knowing the appellant. During cross-examination, Joseph conceded that he had lied to the arresting officers to avoid getting into trouble.

The appellant's testimony

23 The appellant categorically denied that he and Joseph, together with three other persons, were members of an unlawful assembly who had caused hurt to Alim. He claimed that even before any fight took place in the pub, he had left the pub *by the stairs*, together with a male known as Lembang, and two other females. At the entrance to the pub, there were a lot of people, and one of them was his cousin known as Rimong, who approached him. After the two females had boarded a taxi, the appellant heard a signage board being kicked but he did not turn around to look. He and Rimong next walked towards the store, in the direction of Bugis MRT station, as they wanted to take the train home. I noted that this part of the appellant's testimony differed from his police statement in which he claimed that he had walked to Bugis MRT station *alone*. The presence of Rimong was *not* once mentioned in his police statement. When asked to explain, he simply said that at the time of the recording of the police statement, he could not recall Rimong's presence.

24 Somehow, after they had passed the store, the appellant left Rimong behind, and continued walking by himself to Bugis MRT station. He testified that he saw another relative known as Balang in close proximity to Rimong when he left the latter. He later met Balang at the taxi stand of Bugis Junction, and told Balang that he wanted to go home. He was therefore alone when he entered Bugis MRT station. At the escalator, he saw Joseph who told him to run quickly. The appellant claimed that he simply followed Joseph to the platform of Bugis MRT station. Further, he expressed shock at Joseph's detention at the platform, as he had absolutely no inkling of what was going on. He was subsequently detained by the police officers, and became aware of the assault only when Joseph

related the incident to him in the patrol car. Significantly, he admitted that he was wearing a short-sleeved white shirt at the material time. However, he reiterated that he was not linking arms with Joseph at any point in time. Neither did he see Joseph kicking the signage board, punching Alim, nor any person being assaulted.

Rimong's testimony

25 Rimong testified that after he left the pub by the stairs subsequent to a fight in the pub, he saw the appellant at the ground level with two females. During cross-examination, Rimong claimed that he saw the appellant going downstairs using the lift, and admitted that he and the appellant both saw someone kicking the signage boards. I observed that this was directly contrary to the appellant's version of events that the appellant himself left the pub by the stairs, and did not turn around to look when he heard a signage board being kicked (see [23] above). Rimong recounted that it was about 5.30pm or 5.40pm when he and the appellant left the two females, and walked towards Bugis MRT station. He affirmed that he did not see any assault, and had stopped at a bus stop to wait for a friend while the appellant continued walking to the station. I also noted that, contrary to the appellant's evidence (see [24] above), Rimong denied seeing Balang in the area at all.

The decision below

26 The judge chose to believe the version of events proffered by the witnesses for the Prosecution. She found Fadzil to be an independent, disinterested and truthful witness who gave cogent testimony, and would not benefit in any way by testifying for Alim or against the appellant. The corollary of these findings was that the judge disbelieved the witnesses for the Defence, namely, the appellant himself, Joseph and Rimong, and further found them to be untruthful witnesses. She viewed the latter two as interested witnesses who had tailored their evidence in order to protect the appellant. The judge concluded that the totality of the evidence proved the Prosecution's case beyond a reasonable doubt that the appellant was part of the group of five males who had assaulted Alim outside the store. She also adjudged the identification evidence to be more than adequate in sustaining a conviction against the appellant.

The appeal

27 Counsel for the appellant contended that the judge had not only made certain baseless findings of fact, but had also made various errors of law. The material grounds of appeal were that the judge erred in:

- (a) basing the appellant's conviction solely on Fadzil's testimony in the absence of an *express* finding that the testimony was sufficiently compelling;
- (b) accepting that the identification evidence was of a good quality; and
- (c) convicting the appellant for punching Alim.

I found all of these contentions to be unmeritorious, especially in the light of the more limited role which an appellate court may play in the fact-finding process. I will elaborate further.

Failure to make a finding that Fadzil's testimony was compelling

28 The crux of the appellant's case was that the judge erred in law in failing to find that Fadzil's testimony was so compelling that the appellant's conviction could be based solely on it. In support of

this submission, the appellant relied on my earlier decisions in *Kuek Ah Lek v PP* [1995] 3 SLR 252 ("*Kuek Ah Lek*"), *Yeo Eng Siang v PP* [2005] 2 SLR 409 ("*Yeo Eng Siang*") and *Tan Wei Yi v PP* [2005] 3 SLR 471 ("*Tan Wei Yi*"). In the first place, I was of the view that in contrast with these cases cited by the appellant, the present case was not strictly one where the appellant's conviction was placed *solely* on Fadzil's testimony. Other than Fadzil's testimony, the fact that the appellant himself conceded to being present in the vicinity of the crime on the material day and time, provided a link between him and the assault, or at the very least, the main assailant, Joseph. Even more telling was the close friendship between Joseph and the appellant. They had stayed together in the same flat the night before, and were having drinks together in the same pub prior to the occurrence of the assault. Although Joseph and the appellant flatly denied that the latter was involved in any way in the assault, they admitted to meeting each other at Bugis MRT station. The arresting police officers also gave evidence confirming the detention of both parties at the platform of Bugis MRT station.

29 Moreover, Joseph, who readily admitted to the assault, also gave evidence at trial. I took the view that his narration of events, which was tailored to absolve the appellant of all liability, was dubious and internally inconsistent. He testified that when he met the appellant at Bugis MRT station, he had told the appellant to run because he had assaulted someone and the police had arrived. These facts did not sit well with his assertion that the appellant was uninvolved in the assault. If the appellant was innocent, there was no reason for Joseph to tell the appellant to run from the police. To me, it was even more peculiar that Joseph testified that the appellant replied that it was all right as the police had stopped chasing. If the appellant had absolutely no connection with the assault, such a reply would not have been warranted. There were also significant inconsistencies between Joseph's and the appellant's evidence. Contrary to Joseph's testimony that he had spoken with the appellant at the escalator, the appellant initially claimed in the police statement that Joseph had said nothing to him. In court, he testified that Joseph had told him "quick, run", and he had absolutely no idea why he was running with Joseph. When confronted with the contradictory testimony of Joseph during cross-examination, the appellant once again changed his tune, admitting that Joseph had told him about the assault. He attributed the inconsistencies to him being confused, and finally conceded that the police statement was different from his oral testimony as well as Joseph's testimony.

30 Needless to say, Rimong's testimony further weakened the defence case. A comparison of his description of the events evidenced a clear contradiction with that of the appellant. For instance, whilst the appellant claimed that he left by the *stairs* with Lembang and two other female friends, Rimong testified that he left the pub *together* with the appellant who had in fact taken the *lift* down. Further, while the appellant vehemently denied seeing Joseph after they had left the pub, asserting that notwithstanding hearing the loud sound, he did not turn around to *look* at the person who was kicking the signage board, Rimong specifically testified that the appellant *saw* the signage board being kicked. All these factors impacted the credibility of the appellant, Joseph and Rimong, and were rightly taken into account by the judge in convicting the appellant.

31 Turning my attention to the appellant's overt reliance on my recent decision in *Tan Wei Yi* ([28] *supra*) at [25] to argue that the lack of an *express* finding in the judge's grounds of decision that the sole witness's testimony was of such a compelling nature to warrant a conviction was an error of law that could not be rectified, such an argument was clearly misconceived. It was clear from the cases I had relied upon in *Tan Wei Yi* that *Tan Wei Yi* did not stand for such a strict proposition. In *Kuek Ah Lek* ([28] *supra*) at 266, [60] and *Yeo Eng Siang* ([28] *supra*) at [25], all I stressed upon was that it was *imperative* for the trial judge to make a finding that the testimony was compelling to the extent that a conviction might be based solely on it. In both of these cases, I went on to scrutinise the sole witness's testimony, and concluded that the testimony itself was riddled with material contradictions, inconsistencies and improbabilities, thereby resulting in unsafe convictions. This did not mean that the lack of an *express* finding that the sole witness's testimony was

sufficiently compelling would warrant an acquittal in *all* cases.

32 This constricted view propounded by the appellant does not serve well in the interests of justice. In our local jurisprudence, the impetus for subjecting a sole witness's testimony to careful scrutiny is that there is no prohibition in law against relying solely on the evidence of one witness to prove any fact (see s 136 of the Evidence Act (Cap 97, 1997 Rev Ed)). To take away one's life and liberty on the mere basis of the oral evidence of just one person has its inherent dangers, thereby prompting me to sound the caution for the trial judge to be mindful of these dangers, and to scrutinise the testimony with circumspection (for other examples, see *Low Lin Lin v PP* [2002] 4 SLR 14 and *Khua Kian Keong v PP* [2003] 4 SLR 526).

33 It is plainly obvious that the crux of the fact-finding process for the trial judge is not premised in making the simple statement, "I find that the testimony was compelling", but in his or her substantive examination of the coherency and cogency of the testimony. The latter exercise may at times be undertaken without an *explicit* statement in the grounds of decision, and this failure in itself does not warrant an acquittal. It would be an astounding loophole in the law if defence counsel could indiscriminately latch on to the absence of an *express* finding of "compelling testimony" in the grounds of decision to obtain acquittals for their clients. Conversely, it would similarly be unacceptable if a judge, by the pronouncement of such a finding, could simply waive the necessity of scrutinising the testimony conscientiously. Therefore, grounds for allowing an appeal should be based on the substantive findings of the judge in the grounds of decision, rather than on the absence of an *express* finding.

34 In the present circumstances, although the judge did not *expressly* state that Fadzil's testimony was sufficiently compelling, various substantive findings to this effect were evident from the grounds of decision. Other than finding that Fadzil was an independent witness of truth, the judge made an acute observation that Fadzil was a disinterested witness who had no reason to implicate the appellant or any of the others, as they were total strangers to him. There was also no conceivable reason why Fadzil would testify that five people were involved in the incident if only Joseph was involved in the assault. Fadzil had absolutely nothing to gain from testifying for Alim or against the appellant. Upon a detailed scrutiny of Fadzil's testimony, the judge further found it to be materially consistent and cogent. She observed in particular that various parts of his testimony, including the kicking of the signage board as well as the rowdiness of the group, were corroborated by Joseph.

35 I was of the view that the credibility of Fadzil's testimony was further augmented by his experience as a police officer, which experience had honed him with acute observation skills and perception. Rather than trying to capture the assailants by himself, being clearly out-numbered, Fadzil trailed them at a safe distance, ensuring that they were always in sight. Further, Fadzil had a clear recollection of the events, and was able to describe the assailants very well, remembering their attire and distinctive features. I will elucidate on the strength of the quality of the identification evidence later.

36 In contrast, the judge had every reason to doubt the testimonies of the appellant and Joseph, as well as Rimong. To me, it was highly significant that no mention of Rimong's presence was made in the appellant's police statement. The appellant offered no credible explanation for the omission, except to attempt to attribute it to a failure in memory. In addition to the evidence that I have set out at [28]–[30] above, I agree with the judge's finding that it was difficult to believe the appellant's testimony that he did not see the fight in the pub or the assault on Alim, especially since the appellant was in the vicinity at the material time. The judge had rightly observed that there were many occasions where the appellant purposefully disassociated himself from Joseph, for example, by

claiming that he did not see Joseph from the time he left the pub until they met at Bugis MRT station. In fact, the admission that both of them had discussed the assault after their arrest indicated that they might possibly have collaborated with each other on their evidence. I was of the view that there might have been various possible reasons for Joseph wanting to help the appellant, either on the basis of their friendship, or in an effort not to implicate the other three persons who were similarly involved in the assault.

37 As I have always reminded counsel, at the appellate level, they have an uphill task in demolishing findings of fact. This is based on the simple principle that a trial judge is best placed to make findings of fact based on an assessment of the credibility and veracity of the witnesses as the judge has had the benefit of hearing the evidence of the witnesses in full and observing their demeanour (see *Lim Ah Poh v PP* [1992] 1 SLR 713, as I have cited in *Ang Jwee Herng v PP* [2001] 2 SLR 474 at [62]; *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]). In these situations, appellate intervention is only justified when the trial judge's decision was plainly wrong or against the weight of the objective evidence before the court.

38 In this instance, the judge's approach to the witnesses' testimonies was beyond reproach. She dissected and meticulously analysed each and every testimony of the witnesses, leaving no stone unturned before coming to the conclusions she did. As the appellant was unable to show enough justification to overturn the judge's decision, I dismissed this ground of appeal.

Quality of identification evidence

39 In challenging the quality of the identification evidence, the appellant reiterated his arguments below to cast aspersions on the judge's treatment of the evidence. The appellant claimed that Fadzil's line of vision was obstructed on three occasions: (a) when Fadzil was with his father attending to the victim; (b) when the group was walking to the bus stop at Bugis Village; and (c) when Fadzil was observing the group at the bus stop. Further, the appellant claimed that the judge erred in finding that there were no material differences between the appellant's actual and described physical appearance given that there were at least ten to 15 foreign male persons of similar background in the vicinity at the material time. It was further argued that Fadzil's identification of the appellant was based not on his facial features but on the colour of the shirt, and a cap, which was not even retrieved from the appellant.

40 In its written submissions, the Prosecution relied primarily on the judge's grounds of decision to assert that the judge had correctly assessed the quality of the identification evidence, as was evident in her consideration of the following factors:

- (a) Fadzil was alarmed enough (a) by the conspicuous appearance of the group to call the police prior to the assault on Alim;
- (b) Fadzil was sufficiently close to the group when he was trailing them to notice that the appellant, who was linking hands with Joseph, spoke in a language that sounded like Malay or Dayak, sported a unique hairstyle, was of medium build, and wore a short-sleeved, almost white shirt;
- (c) during the assault on Alim, Fadzil had another opportunity to look at the group for quite some time;
- (d) after the assault, when the group was standing and talking at the bus stop of Bugis Village, Fadzil had another distinct opportunity to observe them unhindered; and

(e) Fadzil had been following the group and keeping sight of them for at least 25 minutes, which was more than a sufficient length of time for him to identify them as the perpetrators.

41 The judge accurately identified the law on identification evidence as that enunciated in the Court of Appeal decision of *Heng Aik Ren Thomas v PP* [1998] 3 SLR 465 ("*Heng Aik Ren Thomas*") at [33]–[35]:

The first question which a judge should ask when encountering a criminal case where there is identification evidence, is *whether the case against the accused depends wholly or substantially on the correctness of the identification evidence* which is alleged by the defence to be mistaken.

If so, the second question should be this. *Is the identification evidence of good quality*, taking into account the circumstances in which the identification by the witness was made? ... If after evaluation of the identification evidence, the judge is satisfied that the quality of the identification is good, he may then go on to safely assess the value of the identification evidence.

Where the quality of the identification evidence is *poor*, the judge should go on to ask the third question. *Is there is any other evidence which goes to support the correctness of the identification[?]*

[emphasis added]

42 As regards the first consideration, there was no doubt that the Prosecution's case against the appellant depended substantially on Fadzil's identification of him as one of the assailants. Moving on to the second consideration, in determining whether the identification evidence was of good quality, a multitude of factors had to be considered. A non-exhaustive list of factors which could be considered was promulgated in *Heng Aik Ren Thomas* at [34], namely:

... the *length of time* that the witness observed the accused, the *distance* at which the observation was made, the presence of *obstructions* in the way of the observation, the *number of times* the witness had seen the accused, the frequency with which the witness saw the accused, the presence of *any special reasons* for the witness to remember the accused, *the length of time which had elapsed* between the original observation and the subsequent identification to the police and the *presence of material discrepancies between the description of the accused as given by the witness and the actual appearance* of the accused. In considering the circumstances in which the identification was made, the judge should take note of any specific weaknesses in the identification evidence. [emphasis added]

43 In my view, the present identification evidence more than satisfied the factors listed above. Fadzil had plenty of opportunities to observe the appellant – during the commotion outside the pub entrance, during the assault, and at the bus stop. Fadzil's detailed description of the events was significant as to his level of observation. Fadzil could describe the manner in which Alim was attacked, and did not try to embellish the manner of assault. The Defence also did not challenge Fadzil's testimony that he had observed the appellant for at least 25 minutes, which in my view, was a sufficiently long period of time to correctly identify the perpetrators.

44 Significantly, there were special reasons for Fadzil to remember the appellant. From the moment Fadzil noticed the group of five outside the pub entrance behaving in a chaotic and rowdy manner, he distinguished the group, focused his attention on them, and was prompted to call the police. His attention was particularly drawn to the bright blue colour of Joseph's shirt, such that he

was naturally observant of others who were closely associated with Joseph. Therefore, he paid special regard to the appellant, who was linking arms with Joseph. The appearance of the appellant was also distinctive in that the appellant sported very thick hair, and had a cap dangling from his left side pocket, such that an argument based on mistaken identity on the fact that there were ten to 15 different foreign male persons of similar background in the area, was unsustainable.

45 At the platform of Bugis MRT station, Fadzil correctly identified Joseph, and consequently identified the appellant as the other assailant in a matter of seconds. The accuracy of Fadzil's identification of Joseph further lent weight to his identification of the appellant as being associated with Joseph. When asked whether he was sure that the appellant was the one linking arms with Joseph and kicking Alim, Fadzil had no hesitation in affirming his answers. Finally, the appellant's contention that the cap was not one of the items seized by the police was irrelevant. What was crucial to the identification evidence was the ability of Fadzil to positively identify the appellant to the police at the platform of Bugis MRT station. The presence of these factors pointed to a very high quality of identification evidence, especially in the light of the fact that Fadzil made a conscious effort to trail the group, and to capture their every movement so as to ensure that they would eventually be brought to justice. He was also candid enough to admit that there were moments (about 30 seconds) that he lost sight of the group, after which he quickly caught up with the group. Admittedly, Fadzil did not have his eye on the group at every second, but this did not mean that the identification evidence was of poor quality in the light of the circumstances that I have enunciated above. As the judge opined, Fadzil was not just a casual bystander but his attention was focused on the group even before the fight, and his observation of the group members was sharp.

46 In summary, the host of factors pointing to the identification evidence being of good quality supported the dismissal of the appellant's appeal on this ground.

Relevant ingredient of charge not proved

47 Finally, the appellant made the contrived argument that the Prosecution failed to prove an essential ingredient of the charge, *ie*, that the appellant had *punched* Alim. The appellant's arguments were based on an erroneous understanding of the law on rioting. To establish the charge of rioting under s 147 read with ss 141 and 146 of the Penal Code (Cap 224, 1985 Rev Ed) against the appellant, the Prosecution simply has to prove: (a) the presence of an unlawful assembly; (b) the common object of causing hurt; and (c) that violence was employed by the unlawful assembly in the prosecution of the common object. Once the common object of the unlawful assembly of causing hurt was established, it was sufficient for the Prosecution to show that one or more of the members had punched and kicked at Alim, and this member need not necessarily be the appellant (see *Lim Thian Hor v PP* [1996] 2 SLR 258 at 264, [19]).

48 In the present instance, the evidence clearly established that the appellant was part of a group of five persons behaving rowdily, who had a common object to hurt Alim as they all participated in one way or another in the assault, either by punching or kicking Alim. A further point to note was that none of them tried to stop the assault. It was obvious that violence was used and Alim suffered various injuries to his head. Significantly, Joseph had admitted to punching and kicking Alim, which was sufficient proof of one of the members of the unlawful assembly having used violence against Alim. There was therefore no need to prove that the appellant was the one who threw the punch for him to be guilty of the offence of rioting, as he was part of the unlawful assembly.

Conclusion

49 Considered in its totality, the evidence before the judge was stacked against the appellant.

The evidence pointed quite distinctly to the fact that the appellant was a member of an unlawful assembly of five persons, which had the common object of causing hurt to Alim. Violence was used in the prosecution of this common object. Whether or not the appellant had punched Alim was irrelevant, as a strong case could be made out that he was in agreement with the common object of the group, since he did kick at Alim and did not attempt to stop Joseph in the assault. The appeal against conviction was therefore devoid of any merits and accordingly dismissed. I did not disturb the sentence of 15 months' imprisonment.

Copyright © Government of Singapore.